No. 21,302

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAHALA ASHLEY DICKERSON,	)
	)
Appellant,	)
	)
vs.	)
	)
RICHARD GANTZ, JAMES DELANEY, JR., GEORGE HAYES, ROBERT ERWIN, and DAVID THORSNESS,	)
	)
Appellees.	)

BRIEF OF APPELLEES

W. C. ARNOLD
201 Lathrop Building
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Anchorage, Alaska
Attorney for Appellees

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

JURIDSICTIONAL STATEMENT

Rule 18(a) of this Court requires a statement of the "pleadings and facts" disclosing the basis contended for District Court jurisdiction and that "this court" has jurisdiction to review.

Final judgment was entered below dismissing plaintiff's second amended complaint (R 284) and § 1291, Title 28, USCA sustains the jurisdiction of this court to review that judgment.

Except as to the third claim for relief of the second amended complaint based on violation of the antitrust laws, Appellees can find no "pleadings or facts" sustaining the jurisdiction of the District Court to render its judgment. In fact the District Court didn't either and dismissed.

Absence of jurisdictional prerequisites will be developed throughout this brief.

STATEMENT OF THE CASE

The rules of this court require Appellees brief to contain a statement of the case unless that of Appellant be not controverted.

Appellant's statement of the case (Appellant's brief pp. 9-13) is hard to "controvert". Even if generally true, which is denied, little if any bears on the merits of this appeal. She alleges the filing of an action against the Alaska Bar Association and its dismissal by Judge Hodge over her objection (R 169). The record (R 158-159) discloses that it was dismissed by stipulation bearing the signature of Appellant.

She asserts that a certificate of good standing was denied her by the Alaska Supreme Court because of a grievance pending against her.(R 179). She seems to imply that the certificate was withheld soley because the Grievance Committee had advised the Alaska Supreme Court of a lodging of the grievance against her. But she herself called the Supreme Court's attention to the grievance by "Petition for Original Relief" (R 8-23 & 165) filed in April 1964.

She fails to point out that the rules governing the Alaska Bar Association promulgated by the Supreme Court effective June 1, 1964, contain Rule 9, Section 5 of which (Appep.1, this brief) require copies of all

written complaints of misconduct "to be mailed to the Clerk of the [Alaska] Supreme Court". The grievance involved here (R 71,72) was such a "complaint of misconduct" and the Grievance Committee having it before them on June 1, 1964, when the Supreme Court rules became effective was required by said rules to mail a copy to the Clerk of the Supreme Court. The Clerk in turn on July 29, 1964, advised Appellant that her request for Certificate of Good Standing was denied (R 83). On whose authority she took such action the record does not reflect. It could hardly be contended that she acted at the instance of the Appellees. Her superiors, the Supreme Court Justices were not made parties. Incidentally, it appears that someone connected with the Supreme Court, whether Justices or Clerk, changed their minds, since a Certificate of Good Standing was issued on August 31, 1965, and is still in force. (App. pp. ii-v, this brief) Nor is any grievance pending against her.

The case as pleaded by Appellant is for four separate claims for relief. First, injunction against further action to harass and intimidate; Second, conspiring to harass and intimidate; Third, violation of antitrust laws; and Fourth, libel.

Diversity being absent, jurisdiction fails except as to violation of the antitrust laws. However the long and repetitive second amended complaint was

civil rights overtones and as Judge Plummer pointed out in his Memorandum of Decision and Order (R 260) Appellant contended on argument that her claim was really for deprivation of her constitutional and civil rights.

Conceding this to be true, the case is for violation of the antitrust laws and of the civil rights act. All other features are outside the federal jurisdiction.

But the court below found that no claim was or could be stated for violation of the antitrust laws (R 265) and that by reason of failure to comply with Rule 8(c) (1) Rules of Civil Procedure no claim had been stated under the Civil Rights Act (R 264,265). Appellant was allowed thirty days to amend (R 265). She did not do so and the remaining count was dismissed (R 283).

Laying aside claims outside the federal jurisdiction, this appeal then is to review the dismissal of the antitrust count for failure to state a claim for relief and to review the action of the trial court in dismissing the civil rights claim following Appellant's refusal to amend.

ARGUMENT

Attorneys

At the threshold of her case, Appellant is confronted with the admitted fact that the Appellees are attorneys at law and members of the Alaska Bar Association, which, as Appellant points out in Paragraph 4 of her Second Amended Complaint (R 164) is an instrumentality of the State of Alaska created by the Legislature and recognized by the State Constitution. It is apparent from the record and was conceded by Appellant below (R 231) that all of the acts complained of with one exception were performed by Appellees in their several capacities as members of a grievance committee appointed by the Alaska Bar Association to process grievances which might be lodged against members of the Bar, and who, as Appellees alleges, were acting under color of State law. The exception is Appellee, Robert Erwin "Complainant, the District Attorney" (R 173) who, in his capacity as State District Attorney, so it is alleged, lodged a complaint with the grievance committee respecting Appellant.

Appellant seeks to overthrow the long standing rule that disciplinary proceedings against an attorney are quasi-judicial in character and that absolute immunity attaches to statements and actions of those participating therein, whether as complainants, witnesses or grievance

committee members. Special immunity surrounds the official acts of district attorneys. This is the holding of a solid line of authorities, ancient and modern, in both England and the United States and in the Federal Courts as well as the State Courts.

The immunity which surrounds Appellees disposes of the case at the outset. They cannot be held to answer for their actions whether the suit be for violation of the antitrust laws, or the Civil Rights Act.

Immunity

The best modern analysis of the authorities dealing with the subject of absolute immunity surrounding the statements and actions incidental to a judicial proceeding or quasi-judicial proceeding, such as a disciplinary action, is found in the decision of the Supreme Court of Oregon in Ramstead v. Morgan, (Ore. 1959) 347 P.2d 594. Dozens of cases, both State and Federal, including the early American and English decisions, are cited and analyzed. The conclusion of the Oregon court was that absolute immunity attached to a complaint made to the chairman of a county grievance committee of the Oregon Bar and, by analogy, extended to the committee receiving the complaint and their action on it. The opinion of this court in Parker v. Title and Trust Company, 233 F. 2d 505 (reh. den. 237 F. 2d 423) was cited in support as was 3 Restatements, Torts,§ 587. Attention was called to the decision

of the California Supreme Court in Albertson v. Raboff, (Cal. 1956) 295 P.2d 405, recognizing the privilege in connection with judicial proceedings where no function of the court or its officers was involved, such as in the filing of a Lis Pendens.

Civil Rights Cases

Nor is the rule different in civil rights cases. The immunity which surrounds the Appellees here is not destroyed by interposition of the Civil Rights Act. This is the plain holding of this court in several recent cases. In 1965 it was said in Haldane v. Chagnon, (9th Cir.) 345 F.2d 601, 603, that -

> "The time honored rule of judicial immunity***so firmly and deeply planted in the field of Anglo-American law is operative in actions grounded upon the Civil Rights Acts."

In Agnew v. Moody, (9th Cir. 1964), 330 F. 2d 868, 869, this court rejected the argument that a charge of conspiracy took the case outside the rule of immunity in civil rights cases and said -

> "And although conspiracy is an essential element of the offense under 42 USCA, Section 1985 [Civil Rights Act], the doctrine of immunity nevertheless applies to actions under that section."

Nor has Monroe v. Pape, (1961) 365 U.S. 167, 81 S. Ct. 473, 5 L.Ed. 2d 492, made the doctrine of immunity inapplicable to the civil rights cases. It treats with an entirely

different matter and will be dealt with later in this brief. The Ninth Circuit Court decisions above mentioned were rendered after Monroe, supra, and this court saw no such result. The Eighth Circuit specifically discussed the application of Monroe in Rhodes v. Van Steenburg, et al, (8th Cir. 1964), 334 F.2d 709, 718, and after surveying the cases citing Monroe, said -

> "We find there is overwhelming support for the position that judicial immunity and its derivative quasi-judicial immunity have not been affected by Monroe. See Harvey v. Sadler, (9th Cir.) 331 F.2d 387."(Citing other cases)

Practice of Law

But this is not all. The right to practice law in the state courts is not a privilege granted by the Constitution or laws of the United States, and alleged interference with that right raises no federal question; and the alleged conspiracy to deprive Appellant of her right to practice law is not a conspiracy to interfere with any right or privilege "granted, secured or protected by the Constitution of the United States". This is the holding of this court and of federal courts everywhere.

In an offshoot of this very case, the Alaska District Court held and decided in Alaska Bar Association v. Dickerson, 240 F. Supp. 732, that the right to practice

law in the state court is not a privilege granted by the federal constitution or laws, citing Michell v. Greenough, (9th Cir. 1938) 100 F. 2d 184 (cert. den. 306 U.S. 659) and Niklaus v. Simmons, (D.C. Neb. 1961) 196 F. Supp. 691, and Green v. Elbert, (8th Cir.), 63 F. 308, holding that a conspiracy to deprive a lawyer of his right to practice law in the state courts, was not a conspiracy to interfere with any right or privilege granted, secured or protected by the Constitution of the United States, was also cited.

Mitchell v. Greenough, supra, and the Supreme Court authority on which it is based, was cited by Circuit Judge Lemon in his dissenting opinion in In Re Sawyer, (9th Cir. 1956) 256 F.2d 553. The standing of Mitchell v. Greenough, supra, as the law of this circuit was not challenged in the majority opinion.

Due Process

This is not to say that plaintiff, as a member of the Alaska Bar, is not entitled to the benefit of the Due Process Clause of the 14th Amendment in connection with grievance or disciplinary proceeding lodged against her pursuant to state law or regulation. Application of due process to the record before the court in this case is later developed.

The Separate Causes of Action

Considered against this background, we will discuss the four claims in the order of their appearance. The deficiencies above pointed out are applicable to all claims and will not be restated.

First Claim is Moot. (Injunction against further action to harass and intimidate.

The allegation is that Appellant was the subject of a false and groundless grievance complaint (R 165) based on an invalid rule, (R 166) and that during the processing of the complaint, she was denied due process and equal protection of the laws. But the Appellant also alleges that on October 12, 1965, the Bar Association dismissed the grievance complaint (R 167) and promised to give Appellant equal protection of the laws (R 168). Further, by stipulation between Appellant and the Alaska Bar Association in this case, it was agreed that any grievance against Appellant, either pending or future, wouldnot be entertained under the then revoked Supreme Court Order No. 64, of which she complains (R 158); or by a grievance committee of which Appellees were members (R 158).

It is clear that no present controversy, justifiable or otherwise, between Appellant and Appellees exists by reason of the first claim. The Supreme Court in

United States v. Alaska Steamship Company, (1919) 253 U. S. 133, 116, 40 S. Ct. 396, 64 L. Ed. 808, said -

> "***it is a settled principle in this Court that it will determine only actual matters in controversy essential to the decision of the particular case before it. Where, by an act of the parties, or a subsequent law, the existing controversy has come to an end, the case becomes moot and should be treated accordingly. ***This court is not empowered to decide moot questions or abstract propositions, or to decide for the government of future cases, principles or rules of law which cannot affect the result as to the matters in issue in the case before it."
>
> See also the decision of this Court in Sawyer v. Pioneer Mill Co., (9th Cir. 1962) 300 F.2d 200.
>
> "Claims based merely upon assumed potential invasions of rights are not enough to warrant judicial intervention." Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 56 S.Ct. 455, 80 L.Ed. 688; State of Arizona v. State of California, 283 U.S. 423, 452, 51 S.Ct. 522, 75 L.Ed. 1154.

Byer v. Securities and Exchange Commission, (8th Cir. 1958) 251 F.2d 512, and authorities there cited are to the same effect.

Since the stipulation and order of October 11, 1962 (R 158), no grievance complaint has been pending against Appellant and the controversy has been moot. There is nothing for the court to act upon. By that stipulation the Bar Association agreed not to reinstate

any grievance against the Appellant under the Supreme Court Rules or to refer any future grievance to a grievance committee composed of these Appellees.

Second Claim. (Damages for conspiracy to harass and intimidate (R 177).

The allegation set forth in Paragraph 2 of the Second Claim is that the Appellees and others "conspired to harass and intimidate Appellant, deny her due process of law, equal protection of the laws, and deny her the right to pursue her profession." (R 178).

It is obvious that the alleged conspiracies, if any, (1) to harass and intimidate, and (2) to deny her the right to pursue her profession, do not involve any Federal question since they do not invade rights secured or protected by the Federal Constitution or laws.

This leave only the alleged conspiracies to deny Appellant (1) due process of law, and (2) equal protection of the laws. These will be discussed later.

Third Claim (Violation of antitrust law (R 181).

The allegation here is that Appellees in a manner not disclosed conspired to deny Appellant the right to practice law throughout the United States and did thereby "restrain commerce between the States and place unlawful restraint on competition". (R 182) The specific section of the antitrust laws violated is not

set forth. It is apparent, however, that Appellant attempts to allege violation of Section 1 of the Sherman Act (Title 15, § 1, USCA). There is no suggestion of monopolization or attempt to monopolize in violation of Section 2 of the Sherman Act (Title 15, § 2, USCA) or of price discrimination, exclusive dealing, etc., such as it denounced by the Clayton Act as amended by the Robinson-Patman Act (Title 15, § 13, USCA). Laying aside the fact that the practice of law, even by those who practice in more than one state, is not engaging in interstate commerce, Appellant is still confronted with the fact that restraint of commerce is not a violation of the antitrust law unless the restraint is so unreasonable as to unduly restrict the free flow of interstate commerce. There is no such claim here. See Klor's, Inc. v.Broadway Hale Stores, (9th Cir. 1958), 255 F.2d 214, where on page 226 this court reverted to its earlier decision that a complaint to state an action under Section 1 of the Sherman Act must allege facts showing -

> "that the conspiracy was reasonably calculated to prejudice the public interest by unduly restricting the free flow of interstate commerce."

The Supreme Court reversed Klor's Inc. on other grounds, 359 U. S. 207, 79 S. Ct. 705, 3 L. Ed. 2d 741, but said on page 211 of the decision that the Sherman Act prescribed contracts or acts [conspiracies] which had a monopolistic tendency

"and which interfered with the natural flow of an appreciable amount of interstate commerce." This is another way of saying the same thing.

This court in Klor's Inc., supra, said on page 224 -

> "Apex Hosiery Co. v. Leader, [310 U.S. 469] teaches that not every restriction on commerce is a restraint of trade within the meaing of the sherman Act."

Practice of Law

But the practice of law is not commerce within the meaning of the antitrust laws. This was pointed out by Chief Justice Stone in his dissenting opinion in the United States v. Southeastern Underwriters Association, (1944), 322 U.S. 533, 573, 64 S. Ct. 1162, 88 L.Ed. 1440. The case dealt with the insurance business and Justice Stone, in the course of his opinion, said on page 573 of 332 U.S. -

> "The practice of law is not commerce, nor, at least outside the District of Columbia, is it subject to the Sherman Act, and it does not become so because a law firm attracts clients from without the state or sends its members or juniors to other states to argue cases, or because its clients use the interstate mails to pay their fees. Federal Baseball Club v. National League, supra."

In the authority cited, Federal Baseball Club v. National League,(1922) 259 U.S. 200, 209, 42 S.Ct. 465, 66 L. Ed. 898, Justice Holmes had said -

> "To repeat the illustration given by the court below, a firm of lawyers sending out a member to argue a case ***does not engage in such commerce [interstate commerce] because the Lawyer***goes to another state."

The reference to the court below was to the decision of the District Court of Appeals of the District of Columbia in National League, etc. v. Federal Baseball Club, (1920) 269 F. 681, 685, where the court said -

> "Suppose a law firm in the City of Washington sends its members to points in different states to try lawsuits; they would travel, and probably carry briefs and records in interstate commerce. Could it be correctly said that the firm, in the trial of the lawsuits, was engaged in trade or commerce?"

Fourth Claim (Libel (R 183)).

The libel action fails on all grounds. The actions and utterances were cloaked with immunity and did not involve a right or privilege secured by the Federal Constitution. There is no diversity and no special statutory jurisdiction. We need give no further consideration to the libel claim.

Civil Rights

The principal effort of plaintiff no doubt is to state a cause of action under the Civil Rights Act. What is the Civil Rights Act?

§ 1983 and 1985

The application here is limited to § 1983 and 1985

of Title 42 USCA, § 1983 creates a liability against -

> "Every person who under color of statute, ordinance, regulation*** of any state***subjects***any citizen***to deprivation of any rights, privileges or immunities secured by the Constituion and laws [federal laws].

Laying aside equal protection of the laws and equal privileges and immunities under the laws it is immediately apparent that under the facts alleged only due process is left for consideration.

Due Process

> "Nor shall any state deprive any person of life, liberty or property without due process of law." (14th Am.)

No Denial of Due Process

As affirmately appears from the allegations of the complaint, Appellant has not been deprived of "life, liberty or property". She still has her life and liberty. She has never been detained. The only property involved, if it is property, is her right to practice law in the State Court of Alaska. This she still has. Furthermore, all proceedings to deprive her of that right have been dismissed, and the matter is moot.

But even so, what are the actions of Appellees alleged to have constituted denial of due process.

(The Following references are to numbered paragraphs of Appellant's Second Amended Complaint.)

Paragraph Five (First Claim) (R 165)

Appellant was served with a complaint based on a charge commenced against her before a grievance committee of the Alaska Bar Association "chaired" by Appellee Delaney and initiated by Appellee Erwin. The complaint was void. She was denied the "right" by the grievance committee "chaired" by Appellee Delaney to cross-examine witnesses against her and to "challenge for cause". It appears from Sections 8 and 9 that Appellant was never brought to trial, and therefore the denial of the right to cross-examine obviously occurred before trial. There was no trial. The complaint was dismissed (R 158). The reference to "the challege for cause" is not further elaborated.

Paragraph Five (Second Claim) (R 180)

The grievance committee of which Appellee Delaney was chairman requested plaintiff to "make full disclosure", and she was asked to appear as a witness against herself. which she did not do. Nor was she disciplined for her refusal; or disciplined at all.

The foregoing are the only actions attributable to Appellees, or any of them, which in any sense approach

the field of due process.

The filing of the charge with the grievance committee and the action of the grievance committee in issuing a complaint on it are hardly to be deemed the taking of property without due process of law when no trial was held and the complaint was dismissed. Nor was due process violated by refusal to allow Appellant to cross-examine the witnesses against her prior to trial. The matter was in an investigatory stage, and since the occurrance was before June 1, 1964, the effective date of abortive Supreme Court Rule 64, the Committee was governed by Rule 130 of the Rules of the Board of Governors (Appellants brief App. p. 58) requiring that the accused be notified in writing that she "may" appear to give any explanation or such evidence as she "deems necessary". There is no allegation that she attempted to contact the witnesses directly and was prevented from so doing by any of the defendants or that she endeavored to exercise any right of discovery which she may have had. There never was a trial. The charges were dismissed.

State Law

Even if, as Appellant contends, the acts complained of constituted a departure from procedures established by state law or regulation and, if proven, would constitute a violation of Appellant's right under state law, still

they involve no federal question or violation of federal law and are not made so by mere conclusory allegations that Appellant was denied due process or equal protection of the laws in violation of the federal constitution. This is so because the allegations of the complaint, when considered apart from the conclusory statements, do not show denial of due process or equal protection of the laws.

> "It is elementary that errors, if any, involving only state law do not deny due process." Baxter v. Rhay, (9th Cir. 1959) 268 F. 2d 40, 43, Citing Gryger v. Burke, 334 U.S. 728, 68 S. Ct. 1256, 92 L. Ed. 1683.

In Draper v. Rhay, (9th Cir. 1963), 315 F. 2d 193, 198, this court said -

> "Due process questions do not arise merely because appellant has been treated at variance with state law." Citing Hughes v. Heinze, (9th Cir.) 268 F. 2d 864, 869, where the court said -
>
> "However this variance [with state law] without more, is not a federal question." (citing more 9th circuit decisions)

As this court pointed out in Agnew v. City of Compton, (9th Cir. 1956), 239 F. 2d 226 -

> "General allegations of this kind, [constitutional violations] when unsupported by the complaint, read as a whole, have consistently been rejected as insufficient."

The Eighth Circuit said in Stanturf v. Sipes, (8th Cir. 1964), 335 F.2d 224, 229 -

> "A mere assertion of a deprivation of a Federal constitutional right is not sufficient to sustain Federal jurisdiction; conclusory statements unsupported by adequate factual allegations in the complaint willnot suffice." (Citing cases including Swank v. Patterson, (9th Cir.) 139 F.2d 145, 146.)

In Yglesia v. Gulf Stream Park, etc., (5th Cir. 1953) 201 F.2d 817, 818, it was said on the authority of Bell v. Hood, 327 U.S. 678, 90 L.Ed. 939, that where the alleged claim under the Constitution or Federal statutes clearly appears to be alleged or made solely for the purpose of creating federal jurisdiction over what would otherwise be an action to vindicate a right arising only under State law and no substantial facts establishing federal jurisidiction are alleged, mere conclusions asserting the violation of a Constitutional right are insufficient.

§ 1985 - Equal Protection

The remaining civil rights provision is § 1985 Title 42, USCA, creating liability -

> "If two or more persons conspire *** for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws or of equal privileges and immunities under the laws."

But the complaint is equally devoid of allegations showing deprivation of equal protection, privileges and immunities as in the case of due process and what was said before on that score is equally applicable here.

Also it should be noted that the violation is to deny "equal protection" or "equal privileges and immunities". It is not enough under § 1985 to simply deny protection of the laws or of privileges and immunities. It is an anti-discrimination statute. Lack of equal treatment or discrimination is an essential element of an action founded upon it, and the requirement is not changed by Monroe v. Pape, infra, and Cohen v. Norris, infra.

No Discrimination

In Snowden v. Hughes, (1943) 321 U.S. 1,8; 64 S. Ct. 397; 88 L.Ed. 497, the Supreme Court, in speaking of the elements of intentional and purposeful discrimination necessary to sustain an action under § 1985, supra, said -

> "But discirminatory purpose it not presumed, Tarrance v. Florida, 188 U.S. 519, 520, 23 S.Ct. 402, 47 L.Ed. 572; there must be a showing of 'clear and intentional discrimination'; Gundling v. Chicago, 177 U.S. 183. 186, 20 S.Ct. 633, 44 L.Ed. 725 (citing additional cases). Thus the denial of equal protection by the exclusion of Negroes from a jury may be shown by extrinsic evidence of a purposeful discriminatory administration of a statute fair on its face (citing cases), but a mere showing that Negroes were not included in a particular jury is not enough; there must be a showing of actual discrimination because of race (citing cases.)"

Truitt v. State of Illinois, (7th Cir. 1960) 278 F. 2d 819 is to the same effect. The Seventh Circuit pointed out that the Section 1985 does not create

a cause of action for false imprisonment unless such imprisonment -

> "is in pursuance of a systematice policy of discrimination against a class or group of persons."

Appellant's complaint fails to meet the test. While she has made the conclusory statement that she was denied equal protection of the law, the facts alleged are only that she was charged under State Bar rules which she claimed were invalid and that her rights were invaded during the investigation. She does allege that she was the only one so charged. But there is no suggestion that others should have been similarly charged or that, if they had been so charged, their rights would not have been invaded to the same extent she claims occurred in her own case. As the Supreme Court pointed out in Snowden v. Hughes, supra -

> There must be a showing of clear and intentional discrimination; a mere showing that Negroes were not included in a particular jury is not enough; there must be a showing of actual discrimination because of race."

Appellant seeks to avoid application of the rule by alleging that she is the only member of the Alaska Bar of the Negro race (R. 170). The implication is that any charge against her must therefore be discriminatory. The end result of such a contention is that, by virtue of a statute creating liability for denial of her constitutional

rights, she is rendered immune from disciplinary action, regardless of her conduct, as long as she is the sole Negro member of the Alaska Bar Association. The position is untenable.

Both § 1983 & 1985

What has heretofore been said, concerning both sections of the Civil Rights Act must be weighed in the light of the decision of this court in Cohn v. Norris, (9th Cir. 1962) 300 F. 2d 24, wherein the court drew a sharp distinction between the allegations necessary to sustain an action based on § 1983 on the one hand and such allegations based on § 1985 on the other hand. Prior to Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed. 492, this court had used language in Agnew v. City of Compton, 329 F. 2d 226, Hoffman v. Haldane, 268 F. 280, and Walker v. Bank of America, 268 F. 2d 16, holding or implying that an allegation that the purpose of the defendant in committing the acts complained of was to discriminate between persons or classes of persons was essential to a cause of action on either § 1983 or 1985.

But in Cohen v. Norris, supra, the court confined the rule requiring allegation of a purpose to discriminate to actions based on § 1985 which in terms makes deprivation of equal protection, or equal privileges and immunities

an essential element of the action. The court said on page 27 -

> "It is likewise true that an essential ingredient of a claim under Sec. 1985 (3) is that a defendant have a purpose of depriving another of the equal protection of the laws or of equal privileges and immunities under the laws."

On page 29, the court held that allegations of such "purpose" was not "essential to the statement of a claim under § 1983" and found it necessary on the basis of Monroe v. Pape, supra, to overrule implications to the contrary ih the earlier decisions.

But this does not affect the rule layed down by the Supreme Court in Snowden v. Hughes, supra, and followed by this court in Agnew v.City of Compton, supra, and Hoffman v. Haldane,supra, and reiterated in Cohen v. Norris, supra, making allegations of "purpose", "an essential ingredient" of claims under § 1985 (3).

The inevitable conclusion then is that the allegations will not sustain an action on either Section. They are generally defective as to both statutes and additionally so as to § 1985.

Rules of Pleading

The trial court properly found Appellant's complaint to be completely lacking in conformity with Rule 8, Rules of Civil Procedure requiring it to contain

(1) a short and plain statement of the grounds upon which the Court's jurisdiction depends, and (2) a short and plain statement of the claim showing that the peader is entitled to relief.

These deficiencies are not as to form, but as to substance. Failure to comply with the rules compounds the efforts required to deduce the nature of the claims sought to be pleaded.

Appellant was given an opportunity to amend (R 265) but refused (R 283). Fundamental to affirmance is a finding that the trial court abused its discretion in directing the amendment and dismissing for failure to amend. As pointed out by this court in Agnew v. Moody, supra, p. 871, "Appellant leftthe court no choice". That case and the authorities there cited fully sustain the action taken.

The Case is Entirely Moot

Included in the appendix of this brief (App. pp.iii-vi) are reproductions of official records and certifications of the Alaska State Supreme Court and the Alaska Bar Association showing that as of this date Appellant holds a Certificate of Good Standing from the Supreme Court of Alaska and that no grievance is pending against her before the Alaska Bar Association or any grievance committee thereof. Appellees request this court to take judicial notice of these documents. They show that Appellant has and enjoys

every right which she claims to have been deprived of. There is no relief which this court or the trial court could afford her. The case is entirely moot.

Conclusion

No claim for relief is stated. No federal jurisdiction is shown. Appellant failed to amend as directed. The case is moot. The judgment should be affirmed.

DATED: May 8, 1967.

Respectfully submitted,

W. C. ARNOLD
Attorney for Appellees

CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit and that in my opinion the foregoing brief is in full compliance with those rules.

W. C. ARNOLD
Attorney for Appellees

APPENDIX

RULES OF THE ALASKA BAR ASSOCIATION

RULE 1

ORGANIZATION OF THE ALASKA BAR ASSOCIATION

Section 1. Creation of Association. All persons admitted to the practice of law in the State of Alaska are hereby organized as an association to be known as the Alaska Bar Association and shall be subject to the rules hereinafter set forth. These rules are adopted in the exercise of the Supreme Court's inherent authority over members of the legal profession as officers of the Court and shall be called the Alaska Bar Rules.

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RULE 9

GRIEVANCE COMMITTEES, PROCEDURES AND REINSTATEMENT

****

Section 5. [Rule 9] Initial Complaint Procedures. All complaints of misconduct shall be in writing, and if practicable signed by the person complaining. The complainant shall make a brief statement of the details of each act of alleged misconduct and the approximate time and place thereof. Within three days after receipt by the committee, or any member thereof, the chairman shall serve copies on the respondent in accordance with section 20 of this rule. Copies shall, within the same time, be mailed to the President and the Clerk of the Supreme

Court. [Emphasis supplied] It shall be the duty of the respondent within ten days after service to make a full and fair disclosure in writing of all the material facts and circumstances pertaining to his conduct in relation to matters set forth in the statement. The deliberate failure to make disclosure or any knowing misrepresentation or concealment of any facts and circumstances by the respondent shall be grounds for discipline. The respondent shall serve and mail copies of his disclosure in the same manner as provided for the service of the statement by the grievance committee and shall serve the chairman of such committee. [Emphasis supplied]

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RULE 13

EFFECTIVE DATE OF RULES

The Rules of the Alaska Bar Association shall take effect on June 1, 1964.

[As promulgated by the Alaska Supreme Court]

THE SUPREME COURT OF THE STATE OF ALASKA

CERTIFICATE

I, Josephine M. McPhetres, Clerk of the Supreme Court of the State of Alaska, do hereby certify that so far as the records of this court indicate, M. Ashley Dickerson is presently in good standing in this court.

JOSEPHINE M. McPHETRES
CLERK, SUPREME COURT,
STATE OF ALASKA

THE SUPREME COURT OF THE STATE OF ALASKA

I, Josephine M. McPhetres, Clerk of the Supreme Court of the State of Alaska, do hereby certify that

M. ASHLEY DICKERSON

was admitted to practice before all courts of the State of Alaska on June 11, 1959, that her professional and private character appears to be good and that she is presently in good standing in this court.

Dated at Juneau, Alaska this 31st day of August, 1965.

JOSEPHINE M. McPHETRES
Clerk, Supreme Court,
State of Alaska.

[SEAL]

ALASKA BAR ASSOCIATION

P. O. BOX 279
ANCHORAGE, ALASKA

May 10, 1967

Re: Grievance Against: M. Ashley Dickerson
Complainant: Robert C. Erwin

This letter will signify that the grievance complaint before the Alaska Bar Association in this matter has been terminated upon the recommendation of Clifford J. Groh, Special Bar Counsel in this matter, which recommendation was concurred in by Roger G. Connor, acting in the capacity of President of the Alaska Bar Association. It should be noted that Mr. Connor, who is presently Vice-President of the Association, accepted this duty at the request of President Eugene F. Wiles, since Mr. Wiles disqualified himself from acting in this case.

Therefore, all grievance proceedings in this matter are officially closed.

James N. Wanamaker
State Bar Counsel

Eugene F. Wiles
President

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